

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

BILLY JOE OGG,
Plaintiff,

vs.

JAMES M. CLARK, et al.,
Defendants.

Case No. 1:16-cv-816
Barrett, J.
Litkovitz, M.J.

ORDER

Plaintiff, an inmate at the Southern Ohio Correctional Facility (“SOCF”) proceeding pro se, brings this civil rights action under 42 U.S.C. § 1983 alleging violation of his constitutional rights by prison employees. This matter is before the Court on defendants’ motion to dismiss (Doc. 12), plaintiff’s response in opposition (Doc. 16), plaintiff’s motion to amend his complaint (Doc. 15), and defendants’ motion to stay the deadline to file their reply memorandum (Doc. 17).

I. Procedural Background

Plaintiff filed his complaint in August 2016. (*See* Docs. 1 and 7-1). Defendants moved to dismiss the complaint for failure to state a claim on November 7, 2016. (Doc. 12). On November 28, 2016, plaintiff filed a motion to amend the complaint as a matter of course. (Doc. 15). The next day, plaintiff filed his response in opposition to the motion to dismiss his original complaint. (Doc. 16). On December 5, 2016, defendants moved to stay the deadline for their reply memorandum until after the Court rules on plaintiff’s motion to amend the complaint. (Doc. 17).

II. Resolution

“A party may amend its pleading once as a matter of course within . . . 21 days after service of a responsive pleading or 21 days after service of a motion under Rule 12(b), (e), or (f),

whichever is earlier.” Fed. R. Civ. P. 15(a)(1)(B). Under the Federal Rules of Civil Procedure in effect before December 1, 2016, three days are added to a party’s period to respond when service of the motion requiring a response is made electronically or by mail. Fed. R. Civ. P. 6(d).


Here, defendants filed their motion to dismiss the original complaint on November 7, 2016 and served a copy of the motion on plaintiff by mail. (Doc. 12 at 15). Thus, plaintiff had until December 1, 2016 to file an amended complaint as a matter of course. *See* Fed. R. Civ. P. 6(d) and 15(a)(1)(B). Accordingly, plaintiff’s motion to amend the complaint filed on November 28, 2016 was timely and is hereby **GRANTED**. Because plaintiff’s amended complaint replaces the original complaint, defendants’ motion to dismiss the original complaint and motion to stay the deadline to file a reply memorandum are **DENIED AS MOOT**. *See ComputerEase Software, Inc. v. Hemisphere Corp.*, No. 1:06-cv-247, 2007 WL 852103, at *1 (S.D. Ohio Mar. 19, 2007) (“Since the amended complaint replaces the original complaint, the motion to dismiss the original complaint is moot.”).

III. Conclusion

Based on the foregoing, plaintiff’s motion for leave to amend (Doc. 15) is **GRANTED**. The Clerk of Court is **DIRECTED** to file plaintiff’s amended complaint (Doc. 15-1 and 15-2). Defendants’ motion to dismiss the original complaint (Doc. 12) and motion to stay the deadline to file a reply memorandum (Doc. 17) are **DENIED AS MOOT**.

IT IS SO ORDERED.

Date: 2/3/17


Karen L. Litkovitz
United States Magistrate Judge